Circuit Court for Baltimore City
Case No. 24-C-18-002529

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2368

September Term, 2019

MATTHEW PETRUS, ET AL.

v.

MAYOR AND CITY COUNCIL OF BALTIMORE, ET AL.

Berger,
Nazarian,
Friedman,

JJ.

Opinion by Berger, J.

Filed: February 23, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. RULE 1-104.

This case is before us on appeal from an order of the Circuit Court for Baltimore City denying a petition for judicial review filed by appellants Matthew Petrus, Joan Floyd, and Douglas Armstrong. The appellees are the Mayor and City Council of Baltimore and multiple corporate entities owned by Seawall Development Company.[1] In their petition for judicial review, the appellants challenged legislation enacted by the Baltimore City Council and the Mayor of Baltimore City repealing a planned unit development ("PUD") in the Remington neighborhood of Baltimore City. The appellants, three homeowners who reside near the PUD, presented several arguments before the circuit court, all of which were rejected. On appeal, the appellants advance three of the arguments advanced before the circuit court as well as one additional argument. We have rephrased the appellate issues as follows:[2]

[1] Miller's Square, LLC, Miller's Square Retail, LLC, and 211 W. 28th Street, LLC, appellees in the instant appeal, are the owners of the properties at issue in this appeal. They are corporate entities owned by Seawall. For clarity, we shall refer to the property owners collectively as "Seawall."

[2] The issues, as presented by the appellants, are:

> 1. May the City Council's 2018 "repeal" of the Remington Row PUD be reversed, when "repeal" of the PUD must satisfy the provisions of a 2019 amendment to the Zoning Code?
>
> 2. Was the City Council's "repeal" of the Remington Row PUD unlawful, null and void under the 2018 Zoning Code?
>
> A. Did the City Council lack the authority to approve Bill 17-0143, when the Zoning Code did not provide for a PUD to be "repealed" without replacement?

I. Whether the legislation repealing the PUD was unlawful, null and void because the City Council lacked the authority to repeal a PUD without replacement.

II. Whether the repeal of the PUD violated the Baltimore City Zoning Code requirements for "major changes" to a PUD.

III. Whether the repeal of the PUD was a quasi-judicial "zoning action" that failed to satisfy applicable requirements for quasi-judicial proceedings.

IV. If considered, whether a 2019 amendment to the Baltimore City Zoning Code that created a new procedural requirement for repealing a PUD must be applied retroactively the to 2018 repeal of the Remington Row PUD.

For the reasons we shall explain, we shall affirm.

FACTS AND PROCEEDINGS

The underlying facts giving rise to this appeal are not disputed by the parties. In 2014, Seawall was interested in a project in the Remington neighborhood of Baltimore City. The proposed development comprised a built area of 2.29 acres, split into three areas, namely, A, B, and C, that were to be developed in phases. The planned development was mixed-use in nature and incorporated both new development and adaptive reuse as well as landscaping and structured and surface parking. On December 10, 2014, the Remington

B. Did the City Council's approval of Bill 17-0143 violate the Zoning Code's requirements for "major changes" to a PUD?

3. Do the Maryland Courts have jurisdiction to review and reverse the City Council's "repeal" of the Remington Row PUD?

Row Business Planned Unit Development was created by Baltimore City Ordinance 14-314.

At the time the PUD was established, Baltimore City was in the process of developing a new comprehensive zoning code known as Transform Baltimore (sometimes styled as "TransForm Baltimore").[3] When the PUD was established, Transform had already been introduced with proposed zoning classifications that were suitable for the development, but the date for enactment of the new zoning code was uncertain.[4] Seawall wished to move forward with the project rather than wait for the new zoning code to be enacted, so Seawall pursued development under the prior zoning code. The desired uses were permitted under the existed zoning, but without a PUD, the ability to aggregate density from the combined parcels was not possible.

Pursuant to the PUD, Area A was developed as the Remington Row mixed-use, multi-family building that contains apartments and commercial space. R. House food hall was developed in Area B as an adaptive reuse project. Area C has not yet been developed and continues to be a 3,000 square foot stand-alone 7-Eleven store and parking lot. Due to

[3] The zoning code is found in Baltimore City Code, Art. 32.

[4] Transform Baltimore was initially introduced on October 22, 2012 via City Council Bill 12-0152 but was not enacted until 2016 via Baltimore City Ordinance 16-581. Typographical errors were corrected in 2017 pursuant to Baltimore City Ordinance 17-015. The Transform Baltimore comprehensive rezoning took effect on June 5, 2017. The Court of Appeals discussed the legislative history of the comprehensive rezoning in *Floyd v. Mayor & City Council of Baltimore*, 463 Md. 226, 232 (2019) (rejecting a challenge to the Transform comprehensive rezoning on the basis of standing).

the remaining years on the lease for the 7-Eleven, redevelopment was not projected to begin in Area C until 2025.

As noted in the Baltimore City Planning Commission's Staff Report recommending the repeal of the PUD, the "project brought over 100 new residents, 15 new local businesses, and new office users into the Remington neighborhood, in addition to more property tax revenue for the City." The Staff Report further provided:

> The two completed developments have given priority back to the walkability and pedestrian friendliness of Remington Avenue by replacing curbless street edges where cars parked in pedestrian pathways with landscaped sidewalks that buffer people from cars and enhance neighborhood connectivity. New street trees, landscape zones in the sidewalks, and new open space in Area C added vegetation to the project area, making outdoor spaces more enjoyable for neighbors.

In September 2017, Seawall sought repeal of the PUD to permit the property "to be operated and developed based on underlying zoning." On September 25, 2017, Bill 17-0143 was introduced in the Baltimore City Council "[f]or the purpose of repealing Ordinance 14-314, which designated certain properties as a Business Planned Unit Development known as Remington Row, and providing a special effective date." In its November 9, 2017 Staff Report, the Planning Commission explained why it recommended approving the legislation to repeal the PUD:

> Since the implementation of the development is mostly complete, including the projected enhancements to the public realm, and the rezoning under Transform Baltimore has taken place, retaining the PUD is no longer necessary. Council Bill 17-0143 proposes the repeal of Ordinance 14-314 to eliminate the Remington Row PUD. Eliminating non-essential land use regulatory layers to promote positive development has been an

> overall goal of the Transform Baltimore Comprehensive Rezoning initiative citywide. The repeal does not effectuate a rezoning of the properties within the PUD nor will it force the closure of any business. Both of the completed projects are supported by-right by the current zoning and the applicant verified that the underlying zoning meets their present and future needs.

On March 7, 2018, a legislative hearing was held before the Baltimore City Council's Land Use and Transportation Committee. The Planning Commission presented its recommendation that the PUD be repealed. Appellants Douglas Armstrong and Joan Floyd spoke at the legislative hearing about their opposition to the repeal. Mr. Armstrong also presented a letter from appellant Matthew Petrus in which Mr. Petrus expressed his opposition to the repeal of the PUD.

Counsel for Seawall argued that the City regularly repeals PUDs and identified several examples. She explained that "now that we have Transform, we just simply don't need [the PUD] anymore." Seawall's attorney explained that although there were "no plans for redevelopment [of] the 7-Eleven site right now," the site "will be redeveloped likely at some point in the future pursuant to its underlying zoning, which is what the Planning Department and the City Council adopted as part of Transform, part of the comprehensive master plan, and . . . will be developed in accordance with that at some [point] in the future . . . ."

Shannon Conway, a representative for the Greater Remington Improvement Association, explained that the association "fully supports the repeal of the Remington Row PUD." She explained that the neighborhood association "originally [was] in support

of the PUD, but now that Transform Baltimore's been enacted, we feel that the PUD no longer best serves the community." She explained that "[t]he PUD prevents the future . . . 7-Eleven site from future mixed-use development that was envisioned by the Remington Master Plan that the Planning Commission recently passed." She also expressed a desire for the Remington Row Rite-Aid to have the option of operating twenty-four hours a day, which would "create more eyes on the street, a safe place in case of emergencies, and also an after-hour retail option." Ms. Conway further expressed that "repealing the PUD would prevent frivolous lawsuits against the [Remington] development" that "cost the developer tens of thousands of dollars" that the neighborhood association "fe[lt] would be better invested in the betterment of the communities."

At the conclusion of the hearing, the Committee Chairman observed that there was "no need of finding of fact" and there were "no amendments." The Committee voted to move the bill favorably with six votes for the bill and one abstention. The repeal bill proceeded through the legislative process and was signed into law on March 27, 2018.

The appellants filed a petition for judicial review in the Circuit Court for Baltimore City on April 25, 2018. The appellants sought to have the repeal of the PUD invalidated.

While the litigation was pending in the circuit court, the City amended the PUD regulations of the Baltimore City Zoning Code via Baltimore City Ordinance 19-252, which became law on April 24, 2019. The changes significant to the issues in this appeal were to the procedure governing the repeal of PUDs. Specifically, pursuant to the new legislation, the Planning Commission and City Council were required to make two findings

when repealing a PUD. No issues regarding the 2019 changes to the PUD repeal procedure were raised before the circuit court.

On January 6, 2020, the circuit court rejected all of the appellants' arguments in a written memorandum opinion and affirmed the City Council's actions. This appeal followed.

DISCUSSION

I.

The first issue we shall address is the appellants' contention that Baltimore City Ordinance 18-121, which repealed the Remington Row PUD, is unlawful, null and void because the City Council lacked the authority to repeal the PUD. The appellants emphasize that prior to the 2019 amendments to the Baltimore City Zoning Code, there was no specific provision prescribing a process for the repeal of a PUD. They assert that the absence of a provision expressly permitting the repeal of a PUD renders the repeal unlawful.

The Remington Row PUD was enacted pursuant to the zoning code in effect prior to the Transform comprehensive rezoning. The new zoning code includes provisions setting forth transition rules for PUDs "approved before the effective date of this Code (June 5, 2017)" and providing that previously approved PUDs "remain valid as long as they continue to comply with all requirements and conditions of their approvals and of the Zoning Code regulations in effect immediately preceding that effective date." Baltimore City Code, Art. 32, § 13-102(a). The transition rules also refer to amendments of existing

PUDs. *Id.* at § 13-102(b).[5] Nowhere in the transition rules or any other section of the zoning code in effect at the time of the repeal is there a reference to the City Council's authority to repeal a PUD or to the process by which a PUD may be repealed.

We are not persuaded by the appellants' assertion that the City Council lacked the authority to repeal a PUD in the absence of a statute expressly creating such authority. Indeed, the Court of Appeals rejected a similar argument in *Waterman Family Ltd. P'ship v. Boomer*, 456 Md. 330 (2017). *Waterman* involved a landowner's challenge to the Queen Anne County's Board of County Commissioners' decision to rescind a rezoning approval that had been made by a predecessor Board of County Commissioners. *Id.* at 333. The landowner asserted that the county did not have the authority to rescind its prior approval of a municipality's rezoning of annexed land when the governing statute did not expressly set forth such authority. *Id.* The Court of Appeals affirmed this Court's holding that even when the governing statute does not explicitly provide that a county may rescind a prior zoning decision, "a county ordinarily has inherent authority to rescind a measure, absent the vesting of rights based on that measure." *Id.* at 339.

The Court of Appeals further described the common law authority supporting this conclusion as follows:

> As a general rule, the governing body of a local government "has the right to reconsider its actions and ordinances, and adopt a measure or ordinance that has previously been defeated or rescind one that has been previously adopted before the rights of third parties have vested." *Dal Maso v. Board of*

[5] We shall address the appellants' argument that the repeal failed to satisfy the requirements for PUD amendments *infra* in Part II of this opinion.

> *County Commissioners*, 182 Md. 200, 206-7, 34 A.2d 464 (1943); see also 4 McQuillin, Municipal Corporations, §§ 13.70, 13.72. This general principle is related to the idea that a legislative body ordinarily lacks authority to restrict the legislative activities of its successors. *State v. Fisher*, 204 Md. 307, 315, 104 A.2d 403 (1954) ("One legislature cannot prohibit repeal or modification by its successors, even where it purports to do so"); *see also Nordheimer v. Montgomery County*, 307 Md. 85, 101, 512 A.2d 379 (1986). Were it otherwise, legislative action would be frozen in time with local officials unable to react to changed circumstances or to pursue policies presently preferred over those previously adopted.

Waterman, *supra*, 456 Md. at 344 (footnote omitted). *See also Dabbs v. Anne Arundel Cty.*, 458 Md. 331, 364 (2018) ("A legislative body is free to react proactively to changing circumstances and repeal or supplement acts or ordinances it finds inadequate or inappropriate to address present-day circumstances.").

A legislative body's "right to rescind a statute, however, is not absolute." *Id.* A legislative body loses its ability to rescind an existing statute if rights have vested, "at least to the extent that rights had vested." *Id.* Indeed, the Court of Appeals discussed this constraint on a governing body's power to rescind in *Waterman*, *supra*, 458 Md. at 344-45 as follows:

> The general power of a governing body to rescind a prior law or policy on a matter subject to its jurisdiction may be constrained in particular circumstances, as when a party has acquired a vested right in the governing body's prior policy decision. Absent such circumstances, the governing body retains the option of changing its mind.
>
> Thus, a county would ordinarily have authority to rescind its action giving assent — or one denying assent — for a municipality's rezoning of recently annexed land. That is true regardless of whether that authority is explicitly reiterated in

> [the governing statute]. As indicated above, there is no indication in the statute that the General Assembly intended to trump the general principle that a county governing body may rescind a prior action.

(Footnote omitted.) The appellants do not assert that they had vested rights based upon the PUD.[6]

The appellants attempt to distinguish *Waterman* on the grounds that *Waterman* involved the rescission of a "very recent action" of the legislature. The appellants assert that *Waterman* does not stand for the principle that the legislature has inherent power to repeal a PUD without replacement. We disagree with the appellants' narrow interpretation of *Waterman*. In *Waterman*, the Court of Appeals discussed the long-established and broad authority a legislative body possesses to repeal its own legislation. In our view, the legislative action at issue in this appeal falls within that broad authority.

Furthermore, we are mindful that PUDs are definitionally alternative overlays to existing zoning regulations. The purpose of a PUD is, *inter alia*, to "encourage flexibility in the development of land and in the design of structures" and "encourage a creative

[6] The appellants discuss the individual appellants' objections to the repeal of the PUD in the Statement of Facts section of their brief, such as Mr. Floyd's belief that "[t]he PUD is something the surrounding neighborhood is supposed to be able to rely on . . . when we make our own plans," and Mr. Armstrong's assertion that the afternoon light in the back yard was a factor when he decided to purchase his home and the light may be diminished if a tall building were to be constructed on the 7-Eleven site. The appellants do not assert that these expectations constitute vested rights under the law. Nor would we be persuaded by such an argument. *See Dabbs, supra*, 458 Md. at 364 ("[T]o be vested, a right must be more than a mere expectation based on the anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand.").

approach to the use of land that results in better development and design than might otherwise be accomplished under the strict application of" the zoning code "on a lot-by-lot basis." Baltimore City Code, Art. 32, § 13-101. Contrary to the appellants' assertion that the PUD was required to remain in effect until replaced, our review of the governing authority regarding PUDs indicates that PUDs can revert to the underlying zoning under certain circumstances. For example, a PUD will "automatically expire" two years after approval if the developer has not satisfied certain deadlines. Baltimore City Code, Art. 32, § 13-502(a). Furthermore, the Zoning Administrator is authorized to "cancel" a PUD for "[f]ailure to comply with the requirements set by or under authority of" the zoning code. Baltimore City Code, Art. 32, § 13-503.[7] Because the underlying zoning remains in effect even when a PUD is established, the area automatically reverts to the underlying zoning if a PUD expires or is canceled for noncompliance. For these reasons, we agree with the appellees that the Baltimore City Council can repeal a PUD via legislation.

Finally, the fact that Baltimore City enacted legislation in 2019 specifically articulating a process for the repeal of PUDs does not mean that the City lacked the authority to previously repeal PUDs. Rather, the 2019 legislation, which we shall discuss further *infra* in Part IV of this opinion, was not a grant of new authority but a self-imposed procedural limitation on the way in which the City Council's inherent authority should be exercised in the future. The 2019 revisions to the PUD sections of the zoning code added

[7] Baltimore City Code, Art. 32, § 13-503 (b) and (c) sets forth the administrative procedure for the cancellation of a PUD by action of the Zoning Administrator.

requirements for certain legislative findings when "determining whether to approve the repeal" of a PUD but did not create the authority for such a repeal. Accordingly, we hold that the City Council had inherent legislative authority to repeal the Remington Row PUD.

II.

The appellants' next contention is that the repeal of the Remington Row PUD violated the Baltimore City Zoning Code's requirements for "major changes" to a PUD. The appellants assert that in the absence of specific provisions for the outright repeal of a PUD, the PUD could not be repealed, but instead, the owners of the Remington Row PUD could have pursued desired changes pursuant to the process for "major changes" to a PUD described in Baltimore City Code, Art. 32, § 13-403. The appellants assert that the City Council did not follow the Baltimore City Zoning Code's "major change" procedures for PUD amendments. As we shall explain, the repeal of the Remington Row PUD did not constitute a "major change" and, therefore, the "major changes" procedure set forth in § 13-403 was inapplicable.

Baltimore City Code, Art. 32, § 13-403(a) provides that "[t]his section applies to the following major changes:

> (1) a 10% increase or 25% decrease in the approved number of dwelling units;
>
> (2) a 10% increase or a 25% decrease in the maximum building heights in the approved planned unit development;
>
> (3) a change in the type, location, or arrangement of land use within the development, as shown on the previously approved final development plan;

> (4) a change in the boundaries of the planned unit development;
>
> (5) a decrease in open space that had been included as a public benefit or amenity under § 13-204 {"Exceptions from district regulations"} of this title; and
>
> (6) any change:
>
> > (i) that fails to substantially comply with the PUD master plan or City regulations; or
> >
> > (ii) that violates:
> >
> > > (A) the underlying zoning;
> > >
> > > (B) an approved exception;
> > >
> > > (C) a condition of approval attached to the planned unit development, with the exception of modifications to the planned unit development's phasing schedule; or
> > >
> > > (D) a provision of the ordinance that approved or amended the planned unit development.

Baltimore City Code, Art. 32, § 13-403(b) provides that "[a] major change requires introduction and enactment of an ordinance to approve an amendment to the planned unit development and PUD master plan."

The appellants assert that "several such 'major changes'" would be affected by the repeal of the Remington Row PUD. Critically, however, when the City Council repealed the Remington Row PUD, the area where the PUD had previously been located reverted to the underlying zoning. The "major change" provisions of the Baltimore City Zoning Code ensure that any significant modifications to a PUD are evaluated in a similar manner as when the PUD was initially adopted. Such an analysis is not necessary when a property

reverts to its underlying zoning. As the circuit court aptly observed in its comprehensive memorandum opinion, "[t]his is not a new zoning decision; it is a return to a prior decision." Contrary to the appellants' assertion, a repeal is not an amendment or modification. We hold, therefore, that the requirements for "major changes" to a PUD set forth in Baltimore City Code, Art. 32, § 13-403, are inapplicable to the repeal at issue in this appeal.

III.

The appellants further assert that the City's repeal of the Remington Row PUD failed to satisfy the procedural requirements for quasi-judicial zoning actions. Specifically, the appellants contend that the repeal of the Remington Row PUD was an unlawful zoning action that failed to satisfy zoning requirements for quasi-judicial proceedings. As we shall explain, the City's repeal of the PUD was not a quasi-judicial zoning action but was, instead, a legislative action.

The appellants assert that the repeal of the PUD was a zoning action pursuant to *Maryland Overpak Corp. v. Mayor and City Council of Baltimore*, 395 Md. 16 (2006). "When a question arises as to whether a governmental body's decision is legislative or quasi-judicial in nature '[i]n the land use and zoning context, the essential questions to be asked are: what property or properties are being examined, for what reason, and at whose behest?'" *WV DIA Westminster, LLC v. Mayor & Common Council of Westminster*, 462 Md. 369, 397 (2019) (quoting *Overpak*, *supra*, 395 Md. at 37). The Court of Appeals "has

developed the following "standard for determining whether an act is legislative or quasi-judicial in nature:"

> The outcome of the analysis of whether a given act is quasi-judicial in nature is guided by two criteria: (1) the act or decision is reached on individual, as opposed to general, grounds, and scrutinizes a single property; and (2) there is a deliberative fact-finding process with testimony and the weighing of evidence.

Id. at 397-98 (quoting *Kenwood Gardens Condominiums Inc. v. Whalen Properties, LLC*, 449 Md. 313, 332 (2016) (quoting *Overpak*, *supra*, 395 Md. at 33)). Of the two factors, the "most weighty criterion is the fact-finding." *Id.* (quoting *Kenwood*, *supra*, 449 Md. at 659).

The Court of Appeals has described the first factor as follows:

> With respect to the first factor, "ordinarily, proceedings or acts that scrutinize individual parcels or assemblages for the consideration of property-specific proposed uses, at the owner's or developer's initiative, suggest a quasi-judicial process or act." *Kenwood*, 449 Md. at 332, 144 A.3d at 659 (cleaned up). These types of "individualized determinations are" distinguishable "from acts that primarily have broader, community-wide implications, which encompass considerations affecting the entire planning or zoning district." Id. at 332-33, 144 A.3d at 659 (cleaned up).

WV DIA Westminster, *supra*, 462 Md. at 398. With respect to the second factor, the Court of Appeals has explained:

> The second element of the test ordinarily involves the holding of a hearing, the receipt of factual and opinion testimony and forms of documentary evidence, and a particularized conclusion as to the development proposal for the parcel in question. Accordingly, site-specific findings of fact are necessary not only to inform properly the interested parties of

> the grounds for the body's decision, but also to provide a basis upon which judicial review may be rendered.

Id. (quoting *Kenwood*, *supra*, 449 Md. at 333).

The Court of Appeals has "consistently stated that comprehensive zoning is a legislative act," while "piecemeal zoning is a quasi-judicial action." *Id.* at 398-99. In *Overpak*, the Court held that Baltimore City's process for granting an industrial PUD and subsequently approving a PUD amendment proposal was quasi-judicial when the proposal "was evaluated on both individual and general grounds." *Overpak*, *supra*, 395 Md. at 40. The record reflected that the "property alone was singled out for proposed amendment of its zoning" and that the "individualized action . . . focus[ed] on the particulars involved with a specific property and its unique circumstances." *Id.* at 41. The Court further considered the process used to evaluate a proposed PUD amendment, which included a hearing, certain required findings of fact, and the application of specific governing standards to the facts. *Id.* The Court of Appeals concluded that "that the process for the approval of PUDs, and substantive amendments thereto, in Baltimore City is of . . . quasi-judicial character, rather than legislative in nature," explaining its reasoning as follows:

> [C]oncurrent with this hearing and referral process, the [City] Council examined, and ultimately approved, the development plan, which is required to address thirteen separate considerations affecting the site of the proposed PUD or any substantive amendment to an approved PUD. The gravamen of these standards and the inquiry surrounding them is a detailed and thorough examination of the unique circumstances of a specific PUD proposal for a specific parcel, including the potential for adverse impacts on adjacent properties. This process of receiving evidence and creating a record upon which the City Council then must rely in deciding the ultimate

> question of whether the development plan, or amended plan, should be granted is quite analogous to the quasi-judicial processes analyzed in [other cases]. In both of [the other] cases, as was done here, findings of fact were made based on reports from governmental agencies and departments and a public hearing, wherefrom the final governmental decision-maker drew its findings as to the pending matter affecting a particular piece of property.

Id. at 43-44 (internal citations omitted).

The Court of Appeals reached the opposite conclusion, however, in *Kenwood*, *supra*, 449 Md. at 332, which involved the preliminary PUD review process in Baltimore County. At issue in *Kenwood* was "a preliminary finding of eligibility that allowed for the continued review of the PUD proposal by the County" as embodied in a resolution. *Id.* The Court acknowledged that "the fact that the Resolution pertained to a specific property ostensibly weighs in favor of the conclusion that the PUD approval process was quasi-judicial," but emphasized that the County "focused minimally on the unique characteristics of the . . . property itself." *Id.* The Court observed that the County Council focused "on public policy benefits" and particularly "on the benefits that the PUD would confer to the surrounding community." *Id.* at 334-35.

The Court of Appeals further emphasized in *Kenwood* that the County did not engage in "the required level of fact-finding sufficient to qualify it as a quasi-judicial act under Maryland law." *Id.* at 336. The Court found that "the resolution does not satisfy the second factor of the *Overpak* test which requires a deliberative fact-finding process with testimony and the weighing of evidence." *Id.* The Court emphasized that "[t]he County Council conducted no adjudicative hearings, nor did it consider documentary evidence or

opinion testimony similar to the Baltimore City Council in *Overpak*, 395 Md. at 38, 909 A.2d at 248." *Id.* Even though the PUD application was for a particular property, the Court of Appeals determined that the preliminary approval process for a PUD in Baltimore County was legislative rather than quasi-judicial. *Id.* at 338.

The Court of Appeals again considered the legislative/quasi-judicial distinction in *WV DIA Westminster*, *supra*, 462 Md. at 372, a case which involved an appeal of the City of Westminster's denial of a developer's application to amend a general development plan. The Court held that the denial of the application "was a quasi-judicial act, not a legislative act, because the decision was reached on individual grounds involving one parcel through a deliberative fact-finding process involving testimony and the weighing of evidence." *Id.* at 373. The Court emphasized that the City Council and the parties had acknowledged the quasi-judicial nature of the proceedings during the process, explaining:

> And, we observe that, notably, throughout the process — indeed, until the adoption of Ordinance No. 876 and the incorporated written decision of the Council — both Developer and the Council treated the process as quasi-judicial in nature. On December 12, 2016, the Council held a public hearing on the Application. At the beginning of the hearing, the attorney for Westminster recommended that the Council adopt rules of procedure applicable to quasi-judicial proceedings, which the Council approved and adopted. Witnesses were sworn and testified under oath at the hearing, and were subject to cross-examination. During Mackey's testimony, he discussed the quasi-judicial process and the Council's role in that process. During the hearing, the Council's President and attorney for Westminster referred to the hearing as a "quasi-judicial proceeding" and "quasi-judicial hearing[,]" respectively. And, the Council accepted certain witnesses as experts, and received numerous documents as evidence. At the second hearing on January 9, 2017, the Council again cited the quasi-judicial

> standard, and clarified with the attorney for Westminster the process by which it was to deliberate and make a decision. And, at the end of the hearing, when the Council was voting, one member of the Council reminded the others that they were required to conduct a "quasi-judicial hearing[.]" In short, throughout the process, from the filing of the Application to the Council's deliberation and oral fact-finding and voting, both parties treated the process as quasi-judicial.

Id. at 405.

Our review of the record in this case leads us to conclude that the repeal of the Remington Row PUD was a legislative rather than a quasi-judicial action. Although the repeal dealt with a specific property, the result of the repeal was to restore the underlying comprehensive rezoning, not to impose different standards for a particular property. Furthermore, the pre-2019 process for repealing a PUD in Baltimore City was a general legislative process focused on general public policy considerations rather than specific proposals. Indeed, there was no specific proposal under consideration regarding the properties at issue. Moreover, the record plainly reflects that there was no deliberative fact-finding involved in the repeal process. The Committee Chairman expressly stated that there was "no need of finding of fact." We hold that in this case, as in *Kenwood*, the repeal of the PUD lacked the requisite level of fact-finding sufficient to qualify it as a quasi-judicial act under Maryland law. Accordingly, we hold that the City's 2018 repeal of the Remington Row PUD was a legislative act.

IV.

Finally, the appellants assert that the repeal of the Remington Row PUD should be reversed because it did not comply with procedural requirements for repeals of PUDs that

were enacted into law in 2019. The appellees assert that this issue is not preserved for our consideration on appeal, and, in the alternative, the 2019 legislation does not apply retroactively to the repeal of the Remington Row PUD at issue in this appeal.

While this case was pending before the circuit court, the City amended its zoning laws, and, on May 13, 2019, Baltimore City Ordinance 19-252 became law. Relevant to this appeal, Ordinance 19-252 added sections 13-201(d) and 13-205 to the Baltimore City Zoning Code. Section 13-201(d) provides that "[p]lanned unit developments may only be repealed by ordinance of the Mayor and City Council enacted in accordance with the provisions of this title." Section 13-205 sets forth specific findings that must be made by the Planning Commission and the City Council when repealing a PUD as follows:

> In determining whether to approve the repeal of a planned unit development, the Planning Commission and the City Council must find that:
>
> (1) the repeal of the planned unit development is in the public interest; and
>
> (2) the approved final development plan of the planned unit development:
>
> (i) has been substantially completed;
>
> (ii) is no longer necessary in light of the property's underlying zoning;
>
> (iii) is no longer consistent with the City's Master Plan; or
>
> (iv) has been abandoned by the property owner.

Baltimore City Code, Art. 32, § 13-205.

The appellants assert that because the Planning Commission and the City Council failed to make the specific findings required by § 13-205 of the zoning code prior to issuing the ordinance repealing the Remington Row PUD, the City Council's action must be repealed pursuant to the doctrine of retrospective application set forth in *Yorkdale Corp. v. Powell*, 237 Md. 121 (1964). The appellees assert that this Court should not consider this argument because it was raised by the appellants for the first time on appeal. Pursuant to Maryland Rule 8-131, "[o]rdinarily, the appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . .").

The circuit court hearing in this case occurred on September 25, 2018. The new procedural requirements at issue became law in May of 2019.[8] The circuit court did not issue its memorandum opinion in this case until January of 2020. At no time after the enactment of the 2019 amendments to the zoning code did the appellants supplement their filings, request a new hearing, or in any other manner raise this issue before the circuit court. Indeed, the circuit court's memorandum opinion addressed the 2019 amendments in a footnote in its memorandum opinion. The circuit court observed:

> When Ordinance No. 18-121 was enacted, there was no explicit provision in the Zoning Code for repeal of a PUD. In 2019, the City Council added such a provision as Baltimore City Code, Art. 32, § 13-201(d) (added by Ordinance No.

[8] City Council Bill 19-0321, which subsequently became Baltimore City Ordinance 19-252, was passed by the City Council on April 22, 2019. The bill became law on May 13, 2019 without the signature of the Mayor.

> 19-252). The same ordinance added Art. 32, § 13-205, which requires certain findings in support of the repeal of a PUD.

Unsurprisingly, given that no argument regarding the retroactivity of the 2019 amendments were advanced before the circuit court, the circuit court did not address whether the 2019 amendments were entitled to retroactive application.

The appellants do not articulate any reason why this issue was not raised before the circuit court, although the appellants observe, in their reply brief, that the circuit court noted the intervening changes in the law. Instead, the appellants argue generally that they "are entitled to pursue the issue" and "have earned the opportunity to have the Zoning Code's new PUD provisions applied retrospectively to this matter."

We fail to appreciate why the circuit court's recognition of the 2019 amendments to the zoning code serves to preserve this issue for appeal when the appellant failed to argue before the circuit court that the amendments should apply retroactively in this case. Indeed, the Court of Appeals explained in *Luxmanor Citizens Ass'n, Inc. v. Burkart*, 266 Md. 631 (1972), that the ordinary preservation rules apply in this context. In *Luxmanor*, appellants sought review of a grant of a special exception by the zoning board. *Id.* at 644. While the case was pending before the circuit court, the zoning code was amended to require a supermajority vote to grant a special exception. *Id.* Before the circuit court, the appellants did not raise the issue of whether the supermajority requirement should be applied retroactively, but they did raise the issue on appeal. *Id.* The Court of Appeals addressed the preservation argument as follows:

> The appellants admit that [the trial judge] was not advised of this amendment prior to the filing of his opinion and order dismissing the appellants' appeal on December 23, 1971. The record indicates that he did not consider or decide this question. The appellants do not contend that this change in the law is a jurisdictional question which this Court may consider for the first time on appeal under the provisions of [the predecessor to Md. Rule 8-131], so that pursuant to the provisions of [the rule], we do not ordinarily decide any point or question which does not plainly appear by the record to have been tried and decided by the lower court, such as the question under discussion.

In this case, as in *Luxmanor*, the appellants failed to raise the amendment before the trial court. Accordingly, we hold that this issue is similarly not preserved for appellate review, and we decline to exercise our discretion to address the substance of this unpreserved issue.[9]

[9] We acknowledge that, in certain cases, the standard preservation rule may not be applicable in appeals involving a retroactivity analysis, such as when new legislation goes into effect after the circuit court has issued a final judgment. This case does not present us with such a scenario because the amendments at issue became law over seven months before the circuit court entered its final judgment.

Despite discussing the lack of preservation with respect to the retroactivity issue in *Luxmanor*, the Court of Appeals went on to address the merits of the retroactivity issue. The Court of Appeals subsequently discounted the retroactivity analysis in *Luxmanor*, however, explaining that "*Luxmanor's* dictum [regarding the retroactivity analysis] was imprecise and did not accurately reflect the very cases it cited." *Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC*, 410 Md. 191, 224 (2009).

Having determined that the retroactivity argument in this appeal is not preserved for appellate review, we shall not undertake a full analysis of the *Yorkdale* issue. We observe, however, that the City presents a cogent argument as to why the appellants' *Yorkdale* argument is unavailing because the 2019 amendments affect procedure only. Furthermore, we are mindful of the Court of Appeals' admonition in *Grasslands*, *supra*, that appellate courts "should not duplicate expenditure of the parties' and administrative agency's

The 2018 repeal of the Remington Row PUD was a legitimate exercise of Baltimore City's inherent legislative authority. We, therefore, affirm the judgment of the Circuit Court for Baltimore City affirming the 2018 repeal of the 2014 legislation establishing the Remington Row PUD.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

resources for a new hearing simply to apply a new rule, that is arguably procedural, when the hearing was done correctly in the first place." 410 Md. at 228.